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Filing date: **01/12/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052225
Party	Plaintiff Ken Shamrock Inc.
Correspondence Address	RODNEY L. DONOHOO LAW OFFICES OF RODNEY L. DONOHOO 3110 CAMINO DEL REY SOUTH, #314 SAN DIEGO, CA 92108 UNITED STATES rdonohoo@donohoolaw.com, tonya@lionsdenreno.com, heather@lionsdenreno.com
Submission	Other Motions/Papers
Filer's Name	Rodney L. Donohoo
Filer's e-mail	rdonohoo@donohoolaw.com
Signature	/Rodney L. Donohoo/
Date	01/12/2011
Attachments	Settlement Agreement and Assignment.pdf ( 14 pages )(213399 bytes ) Petitioner's Signature.pdf ( 1 page )(10876 bytes )

## **MUTUAL RELEASE AND SETTLEMENT AGREEMENT**

### **RECITALS**

This Mutual Release and Settlement Agreement ("Agreement") is entered into as of January 10, 2011 ("Effective Date") by and between Ken Shamrock Entertainment, Inc., a Nevada Corporation ("KSE"), Ken Shamrock, Inc., a Nevada corporation ("KSI") and Ken Shamrock, an adult individual ("Shamrock") on the one hand (together "the Shamrock Group"), and Lions Den Scottsdale, LLC, an Arizona LLC ("LDS"), and Scott Peters, an adult individual ("Peters") (together "the LDS Group"). KSE, KSI, Shamrock, LDS, and Peters are at times hereinafter referred to individually as a "party" and are collectively referred to as the "parties."

A. WHEREAS, Shamrock is a world famous mixed martial artist and is the founder and creator of the "Lions Den", using the name continuously since the early 1990's for clothing, merchandise, and gyms/mixed martial arts training facilities. This included trade dress, trade names, logos and other indicia associated with the name and logo for the Lions Den ("the Lions Den Brand"); and

B. WHEREAS, Shamrock and his controlled entities has previously registered with the United States Patent and Trademark Office ("USPTO") the Lions Den trademark on six or more occasions, including the most recent registration through KSI at serial #77944275.

C. WHEREAS Shamrock, through KSE, subsequently permitted licensing of the "Lions' Den" brand through KSE to certain licensees for purposes of licensing the Lion's Den Brand to selected licensees in the United States.

D. WHEREAS, KSE entering a License Agreement on or about May 25, 2008 with LDS and guaranteed by Peters which in part authorized LDS to use the Lions Den Brand in

connection with the operation of its single mixed martial arts training facility located at 2954 North Hayden Road, Scottsdale, Arizona, 85251 ("the License Agreement").

E. WHEREAS, the Shamrock Group has alleged that LDS has breached the License Agreement by failing to pay the quarterly obligations referenced therein.

F. WHEREAS, the Shamrock Group further alleges that the LDS Group have further breached the License Agreement by registering for and receiving a service mark for the name "'Lions Den MMA Academy", filed in about July 2009, and registered on January 26, 2010 at Registration Number 3,742,454 ("the LDS Mark")

G. WHEREAS, the LDS Mark has interfered with the Shamrock Group's subsequent application for trademark, which was rejected as direct result of the LDS Mark; and the Shamrock Group further alleges that the LDS Mark has infringed upon and interfered with the Shamrock Group's operation of its business.

H. WHEREAS, a petition for cancellation ("Petition) was filed by Shamrock against LDS in or about March, 2010 at Cancellation No. 9205225, to which LDS filed its Answer in April, 2010.

I. WHEREAS, Peters has previously alleged that he has an alleged interest in KSE and/or other companies affiliated with Shamrock, and has alleged that he is owed monies he allegedly loaned to the Shamrock Group;

J. WHEREAS, the parties intend by entering into this Agreement to fully and completely resolve any and all disputes and claims which they have and may have against each other, whether now known or unknown, including, but not limited to, the allegations and all claims and disputes arising out of or relating to their business relationships and any and all other dealings with each other that predate the execution of this Agreement.

## **AGREEMENT**

NOW THEREFORE, in consideration of the mutual covenants, promises, agreements, terms, and conditions set forth below, and the mutual benefits derived by the parties hereto, the parties agree as follows:

1. The Recitals set forth above are included herein by reference as part of this Agreement between the parties and the parties agree that said Recitals are essential facts to this Agreement.
2. In consideration the covenants, promises, and agreements contained herein, LDS hereby agrees, effective the date of this Agreement, to assign to Shamrock or such entity as designated by Shamrock in writing, any and all rights in and to the LDS Mark. The assignment shall be confirmed by execution of a Trademark Assignment in the form attached hereto as Exhibit 'A'. Further, for themselves, and their respective successors, assigns, heirs, executors, administrators, shareholders, directors, officers, employees, agents, insurers, attorneys, servants, brokers, independent contractors, lenders, and all other related or associated persons, firms, corporations associations, or partnerships, and each of them, the LDS Group fully and forever hereby releases any and all claim(s) to any ownership interest of whatever kind or nature in: 1) the LDS Mark; 2) any ownership interest in any Shamrock related company, including any company in the Shamrock Group; and 3) in the Lions Den Brand or any trade or service name or mark which includes the names "Ken Shamrock" or "Lions Den". LDS shall further assign the domain name [www.lionsdenaz.com](http://www.lionsdenaz.com) to Shamrock on or before December 31, 2011 and shall execute all necessary documentation necessary to effect such transfers, releases and assignments identified herein. The LDS group warrants and represents that it has not previously transferred or assigned any interest in or to the LDS Mark or the Lions Den Brand, or in any item released herein.

3. No later than December 31, 2011 ("Name Cessation Date"), the LDS Group shall forever cease using the business name "Lions Den Scottsdale", or any business name bearing the Lions Den Brand, including the logo previously used by LDS ("the LDS Name") in connection with the LDS Group's business, and shall not transfer or assign the use of the LDS Name to any other person or entity. The LDS Group hereby covenants, warrants, and represents that LDS Group shall not use the LDS Name at any time after the Name Cessation Date.

4. Prior to the Name Cessation Date, the LDS Group shall take all commercially reasonable steps necessary to rebrand its business under a new name, which not include either the words "Lion" or "Den" and provided however that the LDS Group shall not be entitled to use any name which interferes with the efforts of the Shamrock Group to obtain a trademark or service mark for the Lions Den Brand.

5. All parties shall waive any claims for payment against the other party, including the claim identified in recitals above.

6. Upon assignment and transfer of the LDS Mark, and upon the Shamrock Group successfully receiving registration of its LDS Brand by the USPTO, Shamrock shall notify the USPTO of this Agreement and shall dismiss its Petition.

7 Subject to the parties' continuing obligations hereunder, in consideration for the above payment, covenants, promises, and agreements, the parties do, jointly and severally for themselves and their respective successors, assigns, heirs, executors, administrators, shareholders, directors, officers, employees, agents, insurers, attorneys, servants, brokers, independent contractors, lenders, and all other related or associated persons, firms, corporations associations, or partnerships, and each of them, fully and forever release, and acquit each other and their respective successors, assigns, heirs, executors, administrators shareholders, directors,

officers, employees, agents, insurers, attorneys, servants, brokers, independent contractors, lenders, and all other related or associated persons, firms, corporations associations, or partnerships, and each of them (hereinafter referred to as the "Released Parties") of and from any and all claims, claims for damages, warranty reimbursement claims, debts, liabilities, demands, obligations, damages, judgments, costs, attorneys' fees, expenses, compensation, actions and causes of action, of every nature, character and description, which each party now owns or holds, or has owned or held, at any time prior to the execution of this Agreement, whether known or unknown, against each other, including, but not limited to, any and all of the claims set forth, or that could have been set forth, that were alleged or could have been alleged as of the Effective Date of this Agreement.

8. It is understood and agreed that all rights under section 1542 of the California Civil Code and any similar law of any state or territory of the United States are hereby expressly waived.

Said section reads as follows:

**"1542. GENERAL RELEASE – CLAIMS EXTINGUISHED.  
A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
WHICH THE CREDITOR DOES NOT KNOW OR  
SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF  
EXECUTING THE RELEASE, WHICH IF KNOWN BY  
HIM MUST HAVE MATERIALLY AFFECTED HIS  
SETTLEMENT WITH THE DEBTOR".**

9. It is further understood that this Agreement includes a compromise of disputed claims, that this Agreement is not to be construed as an admission of liability on the part of the Released Parties, and that the Released Parties specifically deny any liability and intend merely to avoid litigation and buy their peace.

10. The parties acknowledge that they, or any of them, may hereafter discover facts different from, or in addition to, those now known or believed to be true with respect to the claims, claims

for damages, warranty reimbursement claims, debts, liabilities, demands, obligations, costs, attorneys' fees, expenses, compensation, actions or causes of action released herein and hereby expressly agree to assume the risk of the possible discovery of additional or different facts, and agree that this Agreement shall be and remain effective in all respects regardless of such additional or different facts.

11. It is understood and agreed that in executing this Agreement, the parties have relied wholly upon their own respective judgment, belief, and knowledge of the nature, extent, effect, and duration of their respective damages, loss, expense, or injuries and liability therefore, and this Agreement is executed without reliance upon any statement or representation of or by the parties or their representatives. The parties further declare and represent that no promise, inducement, or agreement not herein expressed has been made to the parties. This Agreement contains the entire agreement and compromise between the parties regarding the releases.

12. The parties further acknowledge that the terms of this Agreement have been completely read and explained to them by their respective attorney(s) of their choice, and that its terms are fully understood and voluntarily accepted by the parties.

13. The parties represent and warrant that no person or entity, other than the undersigned, has, or has had, any interest in the claims, warranties, demands, obligations, damages, causes of action, or other matters, released herein, that the undersigned have the right and authority to execute this Agreement and that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action released herein. The party that breaches the warranties and representations provided in this Paragraph 11 agree to defend, indemnify, and hold harmless the Released Parties as to any and all such claims,

demands, or causes of action made or actions brought by any third party as a result of a breach of the representations and warranties expressed herein.

14. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. The parties understand and acknowledge that each of them has had the opportunity to contribute to the drafting of this Agreement and agree that no provision hereof shall be construed against any party as being the draftsman.

15. No modification or waiver of any term of this Agreement shall be valid unless in writing and signed by the parties hereto. No waiver of any breach hereof shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

16. This Agreement shall be binding upon and shall inure to the benefit of all parties and their heirs, executors, administrators, successors, and assigns.

17. If any term, covenant, condition, or provision of this Agreement is held to be invalid or unenforceable, the remainder hereof shall remain in force and effect and shall in no way be affected, impaired, or invalidated, so long as the full intent of the parties set forth herein can be achieved.

18. Each party hereto shall bear its own attorneys' fees and costs in connection with this Agreement, all matters and other issues related to and preceding the date of this Agreement, and the released matters referred to herein. However, in the event that any party to this Agreement files an action or proceeding to enforce or interpret this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its reasonable attorneys' fees and costs in connection therewith from the non-prevailing party, including costs and reasonable attorneys' fees incurred by the prevailing party in connection with the enforcement of any such judgment, award and/or order as the result of said proceeding, and including costs incurred on appeal.



19. This Agreement shall become effective immediately upon execution by all designated signatories and may be signed in counterparts. Copies of this Agreement signed in counterparts and transmitted by fax or electronic mail (e-mail) shall operate as originals.

20. Each of the parties hereto agrees to take such action and to execute such documents as may be necessary or proper to carry out the purpose and intent of this Agreement.

WE HEREBY CERTIFY THAT WE HAVE READ ALL OF THIS AGREEMENT AND  
FULLY UNDERSTAND THE SAME.

KEN SHAMROCK ENTERTAINMENT, INC.,  
A Nevada corporation,

By \_\_\_\_\_  
\_\_\_\_\_ (Name)  
\_\_\_\_\_ (Title)

KEN SHAMROCK, INC.,  
A Nevada corporation,

By \_\_\_\_\_  
\_\_\_\_\_ (Name)  
\_\_\_\_\_ (Title)

LIONS DEN SCOTTSDALE, LLC,  
An Arizona Limited Liability Company,

By Scott Peters  
Scott Peters  
Owner/President

\_\_\_\_\_  
Ken Shamrock, individually

Scott Peters  
Scott Peters, individually

## **Exhibit A**

## **TRADEMARK ASSIGNMENT**

**THIS TRADEMARK ASSIGNMENT** (the "Assignment") is entered into as of January 10, 2011, by and between **LIONS DEN SCOTTSDALE, LLC**, an Arizona limited liability company ("Assignor") and **KEN SHAMROCK, INC.**, a Nevada corporation ("Assignee").

**WHEREAS**, in connection with a Mutual Release and Settlement Agreement, Assignor desires to assign to Assignee, and Assignee desires to acquire from Assignor, all of Assignor's rights, title and interest in and to the trademark, set forth on Exhibit "A" annexed hereto, together with the goodwill of the business symbolized thereby (hereinafter the "Trademark").

**NOW, THEREFORE**, in consideration of the promises set forth herein, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment. Assignor hereby sells, assigns, transfers and conveys to Assignee all of its rights, title and interest in and to the Trademark, together with the goodwill of the business symbolized thereby, the same to be held and enjoyed by Assignee, its successors, assigns and legal representatives.
2. Right to Sue for Past Infringement. Assignor also assigns to Assignee all claims for past damages by reason of past infringement or misappropriation of the Trademark, with the right to sue for and collect same for its own use and behalf and for the use and on behalf of Assignee's successors, assigns or other legal representatives, without any accounting to Assignor.
3. Cooperation. Assignor agrees to execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments and documents and to perform

such further acts as may be reasonably requested by Assignee to effectuate more fully the transactions contemplated by this Assignment.

4. Binding Effect. The terms, covenants and provisions of this Assignment shall inure to the benefit of Assignee, its successors, assigns and other legal representatives and shall be binding upon Assignor, its successors, assigns and other legal representatives.

[remainder of page left intentionally blank]

**IN WITNESS WHEREOF**, the undersigned, intending to be legally bound hereby, have executed this Trademark Assignment as of the date first written above.

**LIONS DEN SCOTTSDALE, LLC** (Assignor)


By:   
Scott Peters, Member/President

**EXHIBIT A****U.S. TRADEMARK REGISTRATION**

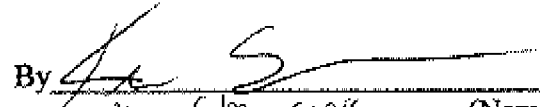
<b><u>MARK</u></b>	<b><u>SERIAL NUMBER</u></b>	<b><u>REGISTRATION NUMBER</u></b>	<b><u>REGISTRATION DATE</u></b>	<b><u>STATUS</u></b>
LION'S DEN MMA ACADEMY	77-776,386	3,742,454	January 26, 2010	Registered

WE HEREBY CERTIFY THAT WE HAVE READ ALL OF THIS AGREEMENT AND  
FULLY UNDERSTAND THE SAME.

KEN SHAMROCK ENTERTAINMENT, INC.,  
A Nevada corporation,

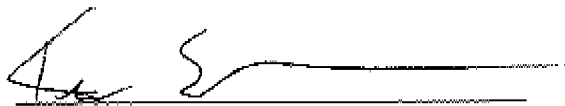
By  \_\_\_\_\_  
Ken Shamrock (Name)  
President (Title)

KEN SHAMROCK, INC.,  
A Nevada corporation,

By  \_\_\_\_\_  
Ken Shamrock (Name)  
President (Title)

LIONS DEN SCOTTSDALE, LLC,  
An Arizona Limited Liability Company,

By \_\_\_\_\_  
Scott Peters  
Owner/President

 \_\_\_\_\_  
Ken Shamrock, individually

\_\_\_\_\_  
Scott Peters, individually